

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

BRIAN LASCALA

Appellant,

v.

SEATTLE PUBLIC UTILITIES

Respondent.

File: CSC 12-01-006

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City of Seattle
CIVIL SERVICE COMMISSION

Introduction

Brian LaScala was terminated from his employment at Seattle Public Utilities and appealed the termination to the Civil Service Commission. Pursuant to SMC 4.04.250.L.7, the Civil Service Commission delegated the appeal to the City of Seattle Hearing Examiner for hearing and decision.

The hearing on the appeal was held on October 30, 2012 before the Hearing Examiner (Examiner). The Appellant represented himself. Seattle Public Utilities (Department) was represented by Nancy Coyle, Labor Relations Coordinator.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. The Appellant was hired as a Water Pipe Worker/Apprentice in the Water Transmission and Distribution Division of the Department's Field Operations and Maintenance Branch in May of 2007. He was promoted to the position of Water Pipe Worker in June of 2009. The position requires a current Washington State Driver's License (WSDL) and Commercial Driver's License (CDL). Exhibit 4. The Appellant had both.

2. The Department has adopted Workplace Expectations that apply to all employees, including the following: "You are expected to ... secure, maintain and renew proper certifications and licenses required for your job title," exhibit 2 at 2, and "You are expected to be honest, responsive and trustworthy." Exhibit 2 at 2.

3. Water Pipe Workers must take a Safe Driving Course every three years. The City's Safe Driving Policy is covered as part of this course and is also reviewed as part of the Department's Apprentices Program.
4. The Safe Driving Policy states that all city employees "who drive in the course of employment must maintain a current, valid Washington State Driver's license with applicable endorsements ... [and] be knowledgeable about and comply with all applicable traffic laws". Exhibit 3 at 1. The Policy provides that "[f]ailure to comply with any portion of this policy may result in corrective measures and/or disciplinary action, up to and including termination of employment." Exhibit 3 at 3. It also requires that [w]ithin one business day of returning to work after any change in the status of their WSDL, CDL, or any endorsement or restrictions thereof, employees shall report such change to their Unit Supervisor." Exhibit 3 at 5. Like SPU's Workplace Expectations, the Policy requires that employees who drive a vehicle in the course of their employment must possess a current, valid WSDL and CDL, and must obey all regulations and traffic laws. Exhibit 3 at 5.
5. On October 22, 2010, the Appellant was involved in an automobile accident with his personal vehicle that resulted in a substantial claim against him by the other driver's insurance company. The Appellant disputed the claim, and the insurance company turned the matter over to a collection agency. When the Appellant refused to pay the collection agency, the agency representative informed the Appellant that his driver's licenses would be suspended. The Appellant did not believe this but did not check into the matter further.
6. The Appellant's WSDL and CDL were suspended on July 1, 2011. The Appellant maintains that he was not notified of the suspension.
7. On December 16, 2011, the Appellant was stopped in Seattle for driving his personal vehicle with expired license tabs. On January 3, 2012, he was stopped for the same violation in Shoreline by a King County Sheriff's Deputy.
8. As a result of the January 3, 2012 traffic stop, the Appellant was charged in King County District Court with driving with a suspended WSDL. He maintains that this is the first time he knew his WSDL had been suspended.
9. The Appellant did not inform his supervisor or anyone else in his chain of command about the suspension and continued to drive large City vehicles when required as part of his work.
10. The Appellant had court dates in February, March, May and July of 2012 related to the charge of driving with a suspended WSDL.

11. On June 26, 2012, during a routine check of employee driver's licenses, the Department discovered that the Appellant's WSDL had been suspended and his CDL invalidated approximately a year earlier.

12. In a letter dated July 18, 2012 to the Deputy Director for Field Operations and Maintenance, the Appellant's supervisor recommended that he be terminated, stating that the Appellant "knew or should have known that his license was suspended and his CDL inactivated." The supervisor stated that the Appellant's loss of driving privileges violated the Department's Workplace Expectations and the City's Safe Driving Policy, and that the Appellant had not been qualified for his position for more than one year. Exhibit 7.

13. In a letter dated July 18, 2012 to Ray Hoffman, Department Director, the Deputy Director for Field Operations and Maintenance stated that he concurred with the recommendation of termination for the reasons stated by the Appellant's supervisor. The letter noted that the Appellant had operated City vehicles for approximately a year without a valid WSDL and CDL, had failed to notify management that his driving privileges had been revoked in July of 2011, and had been unqualified for his position as a Water Pipe Worker for over a year. Exhibit 8.

14. Following his last court date, the Appellant made arrangements to pay his outstanding legal obligations, and his WSDL and CDL were reinstated effective July 18, 2012.

15. In a letter dated July 19, 2012, the Deputy Director of Field Operations and Maintenance informed the Appellant that he was recommending termination of the Appellant's employment with the Department based on the same facts and reasons stated in the July 18, 2012 letter to Ray Hoffman. The letter also advised the Appellant of the date, time and purpose of a scheduled *Loudermill* hearing with the Director. Exhibit 9.

16. When the Appellant met with the Director in the *Loudermill* hearing, he admitted that he had been working with a suspended WSDL and CDL but stated that he did not know they had been suspended.

17. Following the *Loudermill* hearing, the Director asked the Department's Human Resources (HR) staff to check on whether the Appellant would have been informed of his suspended WSDL during the traffic stops for driving with expired vehicle license tabs. During their investigation, the HR staff discovered that the Appellant had been charged six months earlier with driving with a suspended WSDL and had attended his last court date related to the charge just two weeks prior to the *Loudermill* hearing. When confronted with this information, the Appellant admitted that he had known for six months that his WSDL and CDL were suspended.

18. On August 8, 2012, the Director sent a letter to the Appellant terminating his employment "[b]ased on all the information available to me, and the primary fact that you no longer meet the conditions of employment for your position". Exhibit 10 at 2. The letter recites the fact that the Appellant "continued to operate SPU equipment for almost a

year in violation of SPU's workplace expectations and the law," that the Appellant had chosen to be dishonest about his suspension, and that he had disregarded SPU's policies and workplace expectations as well as state traffic laws. Exhibit 10 at 1.

19. Prior cases in which a Department employee has failed to maintain a required license have resulted in termination. The Deputy Director of Field Operations and Maintenance, who has been "in the industry" for 30 years, stated that he had never seen a more egregious case than this of an employee failing to report a suspended license and continuing to drive, thereby creating significant potential liability for the employer.

20. The Appellant's reason for not informing SPU of the suspension was that he knew he needed money to get his WSDL and CDL reinstated, and he was concerned that if he told his supervisor of the suspension, he would be terminated and not have the funds to have his WSDL and CDL reinstated and to support his family.

21. The Appellant was suspended for one day in 2011 for inappropriate behavior in an altercation with another employee but has no other discipline in his record.

22. A Crew Chief who has supervised the Appellant described him as reliable in his work, well-liked and an asset to SPU. He also stated that he did not know of another employee who had continued to drive in his job for a year with a suspended license.

23. Under Seattle Personnel Rule (PR) 1.3.3.C, a regularly appointed employee may be terminated only for justifiable cause, which requires the following:

1. The employee was informed of or reasonably should have known the consequences of his or her conduct;
2. The rule, policy or procedure the employee has violated is reasonably related to the employing unit's safe and efficient operations;
3. A fair and objective investigation produced evidence of the employee's violation of the rule, policy or procedure;
4. The rule, policy or procedure and penalties for the violation thereof are applied consistently; and
5. The suspension or discharge is reasonably related to the seriousness of the employee's conduct and his or her previous disciplinary history.

24. The disciplinary action imposed "depends upon the seriousness of the employee's offense and such other considerations as the appointing authority ... deems relevant." However, a "knowing or intentional violation" of a department's adopted policies, procedures and workplace expectations, constitutes a major disciplinary offense under PR 1.3.4.A.15, and "in the absence of mitigating circumstances," requires suspension, demotion or discharge. PR 1.3.3.B.

25. In determining the level of discipline to impose, the appointing authority "shall consider factors that he or she deems relevant to the employee and his or her offense, including but not necessarily limited to:

1. The employee's employment history, including any previously imposed disciplinary actions;
2. The extent of injury, damage or disruption caused by the employee's offense;
3. The employee's intent; and
4. Whether the offense constituted a breach of fiduciary responsibility or of the public trust.

PR 1.3.4.B

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to delegation from the Civil Service Commission under SMC 4.04.250.
2. The Department must show by a preponderance of the evidence that the Department's decision to terminate the Appellant was made with justifiable cause. CSC Rule 5.31.
3. Through his Apprenticeship and the Safe Driving course, the Appellant had been informed of the Department's Workplace Expectations and the City's Safe Driving Policy. He knew of the requirements for honesty, for obedience to traffic laws that prohibit driving without a valid license, and for timely notifying his supervisor of changes to his license status. He also knew the consequences of having his WSDL and CDL suspended, and he does not dispute this. In fact, the reason he did not notify the Department of the suspension was *because* he knew that the loss of his WSDL and CDL would likely result in termination.
4. The Department's workplace expectations requiring honesty, and that employees "secure, maintain and renew" the licenses required for their jobs, are reasonably related to the Department's safe and efficient operation, as is the requirement of the Safe Driving Policy that employees report any change in their license status within one business day. The Department must insure that employees with driving duties are legally licensed to drive.
5. The Appellant claims that because his WSDL and CDL were reinstated on July 18, 2012, before the *Loudermill* hearing, he met the conditions of employment and should not been terminated. However, were the Department to accept his position, it would sanction a violation of its policies and Workplace Expectations, encouraging employees to conceal the loss of a required license in the hope that they could have it reinstated before the Department discovered the problem.
6. The problem with the Appellant's WSDL and CDL was discovered through a routine check of employees' licenses. And the investigation that followed the *Loudermill* hearing was a review of public records and procedures to determine the validity of the

Appellant's claim to the Director that he did not know that his license was suspended. There is no evidence that the investigation was anything but fair and objective, and the Appellant does not claim that it was.

7. The investigation produced evidence that the Appellant had violated the requirement that he retain the licenses required for his position, and that he knew for at least six months that his licenses had been suspended but did not inform the Department. This constitutes a knowing and intentional violation of Department policies and Workplace Expectations

8. The evidence in the record shows that the requirement for employees' to retain the WSDLs required for their positions is applied consistently, and that the penalty for failure to do so has consistently been termination.

9. The evidence shows that the Department requires Water Pipe Workers to have a valid WSDL and CDL. The Appellant did not meet that requirement for approximately a year but failed to inform his supervisor of that fact. Instead, he continued to drive as part of his employment, hoping to get his licenses reinstated before the Department discovered the problem. This violated the Department's policies and Workplace Expectations, as well as state law, and created significant potential liability for the Department and City. When the licensing issue was discovered, the Appellant lied about it to the Director and others in the Department. The Director's decision terminating the Appellant is reasonably related to the seriousness of the Appellant's conduct and his previous disciplinary history.

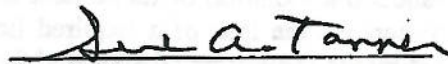
10. The Appellant states that he has made some bad decisions and understands that he put the City at risk, but argues that something less than termination was warranted so that he could have "another chance". However, the evidence shows that the Director considered the required factors listed in PR 1.3.4.B in determining the level of discipline to impose. His decision was within the discretion granted to department heads under PR 1.3.3.B.

11. The Department has shown by a preponderance of the evidence that its decision to terminate the Appellant was made with justifiable cause, and it should be affirmed.

Decision

The Department's decision is **AFFIRMED**.

Entered this 5th day of November, 2012.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner is subject to review by the Civil Service Commission. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules 6.02 and 6.03.



City of Seattle
CIVIL SERVICE COMMISSIONS
 700 Fifth Avenue, Suite 1670
 P.O. Box 94729
 Seattle, WA 98124-4729
 (206) 233-7118

CSC Appeal No.
12-01-006
 Date Filed:
AUGUST 27, 2012
 Date Received:
RECEIVED
 AUG 27 2012
 City of Seattle
CIVIL SERVICE COMMISSION

**NOTICE OF APPEAL TO THE
 CIVIL SERVICE COMMISSION**

INSTRUCTIONS: Submit an original copy of this form to the Executive Director, Civil Service Commissions 700 5th Avenue, Suite 1670, PO Box 94729, Seattle, WA 98124-4729. The appeal must be received by the Executive Director within 20 (twenty) days following the received date or the postmarked date of the final notice from the department to the appellant. An original signature of the appellant or authorized representative is required for appeals. Complete all three pages.

I. Brian LaScala 1318 N. 128th St 206 386 1827
 Appellant's Full Name Work Address Work Telephone
1426 Warren Ave N #13 Seattle WA 98109 206 588 9102
 Residence Address City /State/Zip Home Telephone/Email
water pipe worker SDD - water
 Job Title/Position Department/Unit
5/09 5/07 30036749
 Start Date in Position City Employee Since, Month/Date/Year Employee ID #

Full Name of Authorized Representative (if any) Telephone Number (Include Area Code)

SIGNATURE OF APPELLANT OR AUTHORIZED REPRESENTATIVE

DATE

[Handwritten Signature]

8-24-12

II. **ACTION BEING APPEALED:** (check one)

- Suspension Discharge Demotion Political Patronage

City of Seattle Personnel Ordinance or Rule(s) Violation: What Personnel rule, regulation, or provision, do you believe was violated? SMC 4.04.230 Progressive Discipline

Other Personnel Related Issue: Please briefly state the issue. The reason given for termination

does not accurately describe facts.

III. Reason for this appeal (Please include dates, location and action): Please reference
Attached

Remedy Sought (What do you want?): I would like to be reinstated in my
position of WATER PIPE WORKER.

IV. ARE YOU A MEMBER OF A UNION? YES NO

If yes, Name of Union and Local Number: Plumbers + Pipefitters Local 32

- I HAVE / I HAVE NOT filed a grievance on the same issues that are identified in this appeal, with my union or bargaining unit.
- This matter IS / IS NOT the subject of arbitration pursuant to a collective bargaining agreement.

V. IF YOU ARE NOT A MEMBER OF A UNION:

- Did you receive notification of your right to a timely resolution of this grievance from your Department? Yes / No (SMC 4.04.070)
- I HAVE / I HAVE NOT filed a grievance on the issues that are identified in this appeal, through the intra-departmental grievance procedure. (Personnel Rule 1.4)
- If you filed a grievance through the intra-department grievance process, what was the outcome?

If needed, you may provide this information on an additional sheet of paper. Also, please attach any documents or correspondence that you have received from the Department related to your grievance.

VI. Please list all other parties to be notified of this action:

Name	Title	Complete Address and/or Mail Stop	Phone (Include Area Code)

VII. Do you have an attorney or another person representing you for this appeal? YES NO

If yes, please have the attorney submit a NOTICE OF APPEARANCE to the Commission office. All documents and information related to the appeal will go to the attorney or representative.

NOTE: AN ATTORNEY OR A REPRESENTATIVE IS NOT REQUIRED FOR THE APPEAL PROCESS

A. ATTORNEY:

Name: _____

Firm Address: _____

B. REPRESENTATIVE:

Name _____

Address: _____

If you do not have an attorney or a representative, Please put the address to where all legal documents for the appellant, related to this appeal should be served:

Mailing Address: 1426 WARREN AVE N UNIT B SEATTLE WA 98109

Residence, if different than Mailing Address: same

Home Phone (Include Area Code): 206-588-9102

Work Phone (Include Area Code): _____

Email: BigBr:912@hotmail.com

Brian LaScala
APPELLANT'S NAME (PLEASE PRINT)


APPELLANT'S SIGNATURE

8.24.12
DATE

Notice of the Appeal to the Civil Service Commission regarding Brian LaScala

III. The Recommendation for Discipline letter, dated August 8, 2012 from Ray Hoffman, states: "Based on all of the information available to me, and the primary fact that you no longer meet the conditions of employment for your position, I have decided to terminate your employment effective August 8, 2012." However, I have had a valid Washington state driver's license CDL-A since July 18, 2012, well before the Loudermill hearing. So I contend that I am qualified for the position of Water Pipe Worker and that I currently meet the conditions of employment.

If discipline is deemed necessary I feel that the personnel Regulation titled "Progressive discipline" (SMC 4.04.250) was not adhered to. I have never received a written warning, nor a suspension, nor been demoted regarding this matter. Management skipped directly to discharge. This is a serious issue, but when discipline is necessary I feel that the regulations set forth should be adhered to.